

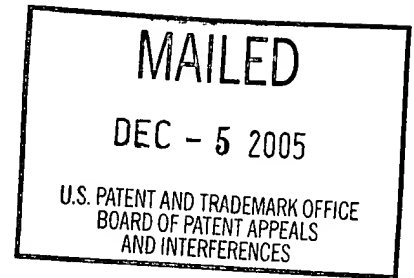
The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte YINHUA YU,
FENGJI XU, and
ROBERT C. BAST, JR.

Application No. 09/357,704



ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on November 3, 2005. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

A review of the file indicates that on May 10, 2005, appellants filed an Appeal Brief under the rules set forth in 37 CFR § 41.37(c), which states in part:

(ix) Evidence appendix. An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of evidence submitted after appeal. This appendix may also include

copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

(x) Related proceedings appendix. An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

A review of the application reveals that these two sections are missing from the Appeal Brief filed May 10, 2005.

Accordingly, the Appeal Brief filed on May 10, 2005 does not comply with the new rules under 37 CFR § 41.37(c). It is required that a supplemental Appeal Brief be submitted that is in compliance with 37 CFR § 41.37(c). For more information on the Board's new rules, please see the web page entitled "More Information on the Rules of Practice Before the BPAI," Final Rule at:

<http://www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html>

Additionally, the "Evidence Relied Upon" section of the Examiner's Answer mailed July 26, 2005 is missing. As stated in the Manual of Patent Examining Procedure § 1207.02 Rev. 3 (August 2005) "Contents of Examiner's Answer:"

(8) Evidence Relied Upon. A listing of the evidence relied on (e.g. patents, publications, admitted prior art), and, in the case of nonpatent references, the relevant page or pages.

Accordingly, it is

ORDERED that the application is returned to the examiner to:

(1) hold the Appeal Brief filed on May 10, 2005 defective;

(2) to notify appellants to file a supplemental Appeal Brief in compliance with 37 CFR § 41.37;

(3) for the examiner to vacate the Examiner's Answer mailed May 27, 2005, and issue a revised Examiner's Answer correcting "Evidence Relied Upon" section;

(4) have a complete copy of the substitute Appeal Brief and any subsequent Examiner's Answer scanned into the record; and

(5) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES



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